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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/814,250	03/21/2001	Charles Christian Birkner		5574

7590

12/20/2002

David F. Martinez
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EXAMINER

PRETLOW, DEMETRIUS R

ART UNIT

PAPER NUMBER

2863

DATE MAILED: 12/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/814,250

Applicant(s)

BIRKNER ET AL.

Examiner

Demetrius R. Pretlow

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 March 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-10 and 13-19 is/are rejected.
- 7) ☒ Claim(s) 5, 11, 12 and 20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Objections

1. Claims 5, 11, 12 and 20 are objected to because of the following informalities:

Claim 5, 11, 12 and 20 are dependent claims, however it is unclear as to which claim they depend from. Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3, 6-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martinez et al. (US 5,943,234) in view of Kroeger (US 2002/0165723). Martinez et al. teach applying one or more test methodologies to the collected information. Note Martinez et al. claims 1-2. Martinez et al. teach generating one or more reports from the test methodologies. Note Martinez et al. column 12, lines 12-27. Martinez et al. does not teach accessing a server on a wide area network. Kroeger teaches accessing a server on a wide area network. Note Kroeger column 3, lines 5-7 and column 11, lines 16-22. Martinez et al. does not teach sending information collected from the material mixture to the server. Kroeger teaches sending information collected from the material

mixture to the server. Note Kroeger Tables 1 and 1A and also note page 6, lines 59-73. Martinez et al. does not teach sending one or more reports to a project manager. Kroeger teach sending one or more reports to a project manager. Note Kroeger page 13, lines 59-66 and lines 54-60.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the invention of Martinez et al. to include the teaching of Kroeger because it would allow documents for completion of the tasks to be managed. Note page 2, lines 60-67.

In reference to claim 2, Martinez et al. teach applying aggregate test methodologies. Note Martinez et al. column 11, lines 29-32 and lines 61-64.

In reference to claim 3, Martinez et al. teach the aggregate test methodologies include specific gravity. Note Martinez et al. column 12, lines 38-40

In reference to claim 6, Martinez et al. teach applying asphalt test methodologies. Note Martinez et al. column 12, lines 36-38.

In reference to claim 7, Martinez et al. teach asphalt tests methodologies includes extraction. Note Martinez et al. column 22, lines 52-54.

In reference to claim 8, Martinez et al. teach applying asphalt mix test methodologies. Note Martinez et al. column 11, lines 29-32.

In reference to claim 9, Martinez et al. teach the asphalt mix test methodologies include Theoretical Maximum Specific Gravity. Note Martinez et al. column 8, lines 60-64.

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In reference to claim 10, Martinez et al. teach applying concrete mix test methodologies. Note Martinez et al. column 5, line 50.

In reference to claim 11, the concrete mix test methodologies include unit weight. Note Martinez et al. column 13, column 13, line 17-47.

4. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Martinez et al. in view of Kroeger as applied to claim 1 above, and further in view of Anderson et al. Martinez et al. and Kroeger do not teach applying soil test methodologies. Anderson et al. teach applying soil test methodologies. Note Anderson et al. column 6, lines 66-67 to column 7, lines 1-7. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the invention of Martinez et al. to include the teaching of Anderson et al. because it would help determine the maximum density of the soil product. Note Anderson et al. column 7, lines 5-7.
5. Claims 13-15, 18, 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harburda et al. (US 2002/0077718) in view of Harburda et al. (US 2002/0077717) further in view of Kroeger (US 2002/0165723) Harburda et al. teach a wide area network. Note Harburda et al. page 2, line 70. Harburda et al. teach one or more client computers coupled to the wide-area-network, each client computer adapted to collect information relating to material properties. Note Harburda et al. page 2, lines 32-46. Harburda et al. teach a server coupled to the wide-area-network note Harburda et al. page 2, lines 12-17. Harburda et

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al. teach the server applying one or more test methodologies to the collected information. Note Harburda et al. page 3 lines 6-21.

Harburda et al. (US 2002/0077718) does not teach generating one or more reports from the test methodologies.

Harburda et al. (US 2002/0077717) teach generating one or more reports from the test methodologies. Note Harburda et al. page 3, lines 5-16.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the invention of Harburda et al. US 2002/0077718 to include the teaching of Harburda et al. (US 2002/0077717) because it would allow comments to be added. Note page 10, line 9.

Harburda et al. (US 2002/0077718) does not teach sending the reports to a project manager.

Kroeger teach sending reports to a project manager.

Note Kroeger page 13, lines 59-66 and lines 54-60: It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the invention of Martinez et al. to include the teaching of Kroeger because it would allow documents for completion of the tasks to be managed. Note page 2, lines 60-67.

In reference to claim 14, Harburda et al. (US 2002/0077718) does not teach applying aggregate methodologies. Martinez et al. teach applying aggregate test methodologies. Note Martinez et al. column 11, lines 29-32 and lines 61-64. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the invention of Harburda et al. (US 2002/0077718) because it would

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allow physical and engineering properties to be defined. Note Martinez et al. column 11, lines 61-62.

In reference to claim 15, Harburda et al. (US 2002/0077718) does not teach aggregate test methodologies. Martinez et al. teach the aggregate test methodologies include specific gravity. Note Martinez et al. column 12, lines 38-40. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the invention of Harburda et al. (US 2002/0077718) because it would help in the determination of bulk. Note Martinez et al. column 12, lines 39-43.

In reference to claim 18, Harburda et al. (US 2002/0077717) does not teach means applying asphalt methodologies. Martinez et al. teach applying asphalt test methodologies. Note Martinez et al. column 12, lines 36-38. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the invention of Harburda et al. (US 2002/0077718) to include the teaching of Martinez et al. because it would allow physical and engineering properties to be defined. Note Martinez et al. column 11, lines 61-62.

In reference to claim 19, Harburda et al. (US 2002/0077717) does not teach asphalt tests methodologies includes extraction. Martinez et al. teach asphalt tests methodologies includes extraction. Note Martinez et al. column 22, lines 52-54. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the invention of Harburda et al. (US 2002/0077718) to include the teaching of Martinez et al. because it would help determine voids in the mineral aggregate. Note Martinez et al. column 22, lines 52-54.

1. Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harburda et al. (US 2002/0077718) in view of Harburda et al. (US 2002/0077717) further in view of Kroeger (US 2002/0165723) as applied to claim 13 above, and further in view of Anderson et al. (US 5,861,751). Harburda et al. (US 2002/0077718), Harburda et al. (US 2002/0077717) and Kroeger (US 2002/0165723) teach all of the limitations above. Harburda et al. (US 2002/0077718), Harburda et al. (US 2002/0077717) and Kroeger (US 2002/0165723) do not teach means for applying soil test methodologies. Anderson et al. teach applying soil test methodologies. Note Anderson et al. column 6, lines 66-67 to column 7, lines 1-7. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the invention of Harburda et al. (US 2002/0077718) to include the teaching of Anderson et al. because it would help determine the maximum density of the soil product. Note Anderson et al. column 7, lines 5-7.

In reference to claim 17, Harburda et al. (US 2002/0077718), Harburda et al. (US 2002/0077717) and Kroeger (US 2002/0165723) do not teach soil test methodologies include Moisture and Density of Soil Aggregate In-Place by Nuclear Method. Anderson et al. teach soil test methodologies includes Moisture and Density of Soil Aggregate In-Place by Nuclear Method. Note Anderson et al. column 7, line 6. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the invention of Harburda et al. (US 2002/0077718) to include the teaching of

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Anderson et al. because it would help determine the maximum density of the soil product. Note Anderson et al. column 7, lines 5-7.

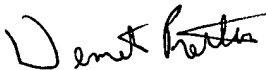
Conclusion

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Demetrius R. Pretlow whose telephone number is (703) 308-6722. The examiner can normally be reached on Monday - Friday from 8:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow, can be reached at (703) 308-3126. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-7722.

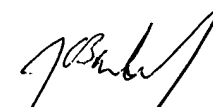
Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1782.

Demetrius R. Pretlow



12/16/02

Patent Examiner



John Barlow
Supervisory Patent Examiner
Technology Center 2800